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MAY 25 2012

RICHARD W. WIERING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

P #1
 See p
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Attorneys for Plaintiffs

8 UNITED STATES DISTRICT COURT
 9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

HRL

10 GENE HOFFMAN, JR.,

11 Plaintiff,

12 vs.

13 MYRON GUSHLAK,

14 Defendant.

CASE NO: CV12-02694
 COMPLAINT FOR DAMAGES
 (Breach of Contract)

DIVERSITY ACTION
 28 U.S.C. § 1332

JURY TRIAL DEMANDED

PARTIES

- 17 1. Plaintiff GENE HOFFMAN, JR., is an individual who is a resident of the
 18 state of California.
 19 2. Defendant MYRON GUSHLAK, is an individual who is a resident of the
 20 state of Pennsylvania, and who is in the United States lawfully.

JURISDICTION AND VENUE

- 22 3. This Court has diversity jurisdiction for residents of different states for
 23 actions in which the amount in controversy exceeds \$75,000.00.
 24 4. Venue for this action is properly in this District pursuant to 28 U.S.C. § 1391
 25 and according to the terms of the written agreement at issue in this action.

FACTS

- 27 5. On August 3, 2006, the parties entered into a written contract for a loan of
 28 \$550,000.00 from Plaintiff HOFFMAN to Defendant GUSHLAK. A true and

1 correct copy of the written agreement is attached as Exhibit A and is
2 incorporated by reference.

3 6. The funds were used by Defendant GUSHLAK to compromise a claim against
4 himself and his wife Debbie Gushlak arising out of a civil action brought by
5 the United States in the United States District Court for the Eastern District
6 of New York. The case was filed under seal which has since been lifted. The
7 claimant had a valid claim that would have resulted in the forfeiture of the
8 home co-owned by Defendant GUSHLAK and his wife Debbie Gushlak. The
9 home is located at 222 Old Prospect Road, Grand Cayman, Cayman Islands.
10 As a result of the compromise with the United States, Defendant GUSHLAK
11 and his wife Debbie Gushlak were able to keep their home. Debbie Gushlak
12 was an intended third-party beneficiary of the promissory note and the
13 agreement compromising the claim of the United States.

14 7. Based on the terms of the loan, Defendant GUSHLAK was entitled to (and
15 did) make periodic principal and interest payments with any remaining
16 principal and accrued interest due and payable on October 1, 2011. After the
17 October 1, 2011 due date, if the loan had not been repaid in full, the interest
18 rate increased on the balance to compensate for late payment.

19 8. The contract was breached when Defendant failed to make full payment of
20 the balance of the principal and accrued interest on October 1, 2011.

21 9. As of June 1, 2012, with credit for all payments made, interest due and
22 payment of principal due on October 1, 2012, the Defendant now owes
23 Plaintiff the sum of \$612,264.92.

24 10. Defendant GUSHLAK is now incarcerated in the FCI Allenwood Low
25 Security federal prison in White Deer, Pennsylvania.

26 11. Debbie Gushlak has filed for divorce from her husband with the dissolution
27 action now pending in the Cayman Islands. In that dissolution action Debbie
28 Gushlak is attempting to dispose of the marital asset of the family home that

1 was rescued earlier by the loan from Plaintiff HOFFMAN.

2 12. The contract between Plaintiff and Defendant contains an attorney's fee
3 provision. As a result of Defendant's breach of said contract, Plaintiff is
4 entitled to an award of reasonable attorney's fees and costs incurred in
5 prosecuting this action.

6 **FIRST CLAIM - Breach of Contact**

7 13. Paragraphs 1 through 12 are incorporated by reference as if fully set forth
8 herein.

9 14. Plaintiff has at all times performed the terms of the contract in the manner
10 specified by the contract.

11 15. Defendant has failed to tender his performance as required by the contract,
12 including but not limited to failure to pay principal and accrued interest on
13 the date it was due.

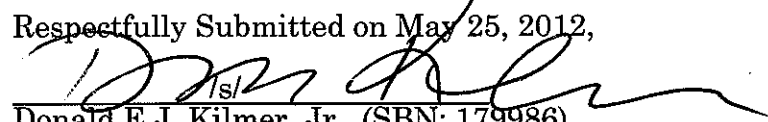
14 16. Defendant's breach of the contract has damaged the Plaintiff in an amount
15 according to proof at trial, but in no circumstances in an amount not less
16 than \$612,264.92.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs prays that this Court will enter judgment as follows:

- 19 A. An award of damages in the amount of \$612,264.92 as of June 1, 2012;
20 B. An award of ongoing interest in accordance with terms of the contract;
21 C. An award of reasonable attorney fees and costs under the terms of the
22 contract;
23 D. Such other and further relief as this Court deems just and proper.

24 Respectfully Submitted on May 25, 2012,

25 
26 Donald E.J. Kilmer, Jr., (SBN: 179986)
LAW OFFICES OF DONALD KILMER

27 Attorney for Plaintiff

Exhibit A

Myron Gushlak.**PROMISSORY NOTE****U.S. \$550,000.00**

I. **FOR VALUE RECEIVED, Myron Gushlak of 222 Old Prospect Road Grand Cayman, Cayman Islands, BWI ("Borrower") by this promissory note ("Note") hereby unconditionally promises to pay to the order of Gene Hoffman, Jr. ("Lender"), or her successor(s) or assign(s), at 751 Sylvan Way, Emerald Hills, CA 94062 the principal sum of five hundred and fifty thousand U.S. dollars (\$550,000.00) as hereinafter provided and to pay interest on the principal balance hereof from time to time outstanding, as hereinafter provided at the rate of seven point nine percent (7.90%) per annum. Interest shall be calculated for actual days elapsed from August 1, 2006. Interest shall be based on a 365 day year. Principal and interest shall be paid as follows:**

September 1, 2006 – September 1, 2011 – Monthly payment of \$3997.44

Date	\$ Principal due	\$ Interest due
<u>October 1, 2011</u>	<u>\$ 521841.83</u>	<u>\$3439.13</u>

II. All principal and interest payable under this Note are payable in lawful money of the United States of America in immediately available funds without deduction for or on account of any present or future taxes, duties, or other charges levied or imposed on this Note or the proceeds or holder hereof by the Government of The United States of America or the State of California or any political subdivision or taxing authority thereof.

III. The Borrower hereby waives diligence, presentment, demand, protest and notice of protest, demand and dishonor, and nonpayment of this Note.

IV. No delay or omission on the part of the holder here in exercising any right hereunder shall operate as a waiver of such right or of any other right under this Note, nor shall any waiver on one occasion be construed as a bar to or waiver of any such right on any future occasion. No waiver shall be effective unless in writing and signed by the holder.

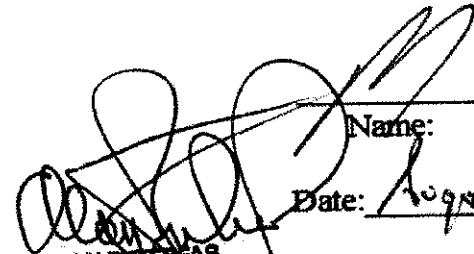
V. This Note shall be governed by and construed in accordance with the laws of the State of California, United States of America.

VI. For any legal action or proceeding with respect to this Note, the Borrower hereby expressly authorizes any action brought upon the enforcement of this Note by Lender, or its successor or assignee to be instituted and prosecuted in any Federal District Court of the United States of America in California or any State Court of competent jurisdiction in San Mateo County, Santa Clara County, or San Francisco County, at the election of Lender, its successor or assign. Borrower accordingly further waives any right, claim, or plea with respect to any other jurisdiction or venue.

VII. In the event that any amount of the principal hereof or interest on this Note is not paid when due, the Borrower, to the extent permitted by applicable law, shall pay on demand interest on such unpaid amount from the date such amount was due to the date such amount is paid in full at the rate of fifteen percent (15 %) per annum ("late interest"). Each payment hereunder shall be credited first to late interest then due and payable, then to ordinary interest then due and payable, and the remainder thereof, if any, to the unpaid principal balance of this Note.

VIII. The Borrower shall have the right, at any time or from time to time, to prepay all or any part of the principal hereof, provided any accrued interest on the amount prepaid is also paid, and any such prepayment shall be applied to the remaining principal installments in the inverse order of their maturities.

IX. Borrower further agrees to pay all reasonable costs of collection, including reasonable attorneys' fees (inclusive of any appellate or bankruptcy proceedings) in case any payment of principal or interest is not paid by the due date thereof, whether suit be brought or not.


Name: Myron Gushlak
Date: August 3, 2006
ALAN FUTERFAS
Notary Public, State of New York
No. 31-494886
Qualified in New York County 2007
Commission Expires February 6, 2012